

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 Percy Lavae Bacon,

5 Plaintiff

6 v.

7 James Dzurenda, et al.,

8 Defendants

Case No.: 2:18-cv-00319-JAD-NJK

Order Dismissing Case

9 Pro se plaintiff Percy Lavae Bacon has three strikes and must pay the full \$400 filing fee
10 in advance for his § 1983 claims unless he is in imminent danger of serious physical injury.¹ So,
11 he moved to proceed *in forma pauperis* under the imminent-danger exception, alleging that he is
12 in imminent danger of losing sight in his right eye.² Magistrate Judge Nancy Koppe denied the
13 motion without prejudice, explaining that Bacon “must first submit a complaint and an
14 application to proceed *in forma pauperis* . . . before the Court can evaluate whether [his]
15 complaint makes a plausible allegation that [he] faced imminent danger of serious physical
16 injury at the time of filing.”³ Judge Koppe then gave Bacon 30 days to file a complaint and a
17 fully complete pauper application. She also warned him that his case may be dismissed if he did
18 not comply with her order.⁴ That 30-day deadline has come and gone, and Bacon has filed
19 nothing.

20 District courts have the inherent power to control their dockets and “[i]n the exercise of
21 that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.⁵
22 A court may dismiss an action with prejudice based on a party’s failure to prosecute an action,

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24 ¹ 28 U.S.C. § 1915(g).

25 ² ECF No. 1.

26 ³ ECF No. 3 at 1.

27 ⁴ *Id.* at 2.

28 ⁵ *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

1 failure to obey a court order, or failure to comply with local rules.⁶ In determining whether to
2 dismiss an action for lack of prosecution, failure to obey a court order, or failure to comply with
3 local rules, the court must consider several factors: (1) the public's interest in expeditious
4 resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the
5 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the
6 availability of less drastic alternatives.⁷

7 I find that the first two factors—the public's interest in expeditiously resolving the
8 litigation and the court's interest in managing the docket—weigh in favor of dismissing this case.
9 The risk-of-prejudice factor also weighs in favor of dismissal because a presumption of injury
10 arises from the occurrence of unreasonable delay in filing a pleading ordered by the court or
11 prosecuting an action.⁸ The fourth factor is greatly outweighed by the factors favoring
12 dismissal, and a court's warning to a party that his failure to obey the court's order will result in
13 dismissal satisfies the consideration-of-alternatives requirement.⁹ Bacon was warned that his
14 case would be dismissed without prejudice if he failed to submit a complaint and file a
15 completed application or pay the filing fee within 30 days.¹⁰ So, Bacon had adequate warning
16 that his failure to submit a complaint and file a completed application or pay the filing fee would
17 result in this case's dismissal.

18 Accordingly, IT IS HEREBY ORDERED that **this action is DISMISSED** without
19 prejudice based on Bacon's failure to submit a complaint and file a completed application to

20 ⁶ See *Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with
21 local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to
22 comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440–
23 41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring pro se plaintiffs to
keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir.
1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421,
1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

24 ⁷ *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423–24; *Malone*, 833 F.2d at 130;
25 *Ferdik*, 963 F.2d at 1260–61; *Ghazali*, 46 F.3d at 53.

26 ⁸ See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

27 ⁹ *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132–33; *Henderson*, 779 F.2d at 1424.

28 ¹⁰ ECF No. 3.

1 proceed *in forma pauperis* or pay the filing fee in compliance with this Court's February 23,
2 2018, order. The **Clerk of Court** is directed to **ENTER JUDGMENT accordingly** and
3 **CLOSE THIS CASE.**

4 Dated: April 13, 2018

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6 U.S. District Judge Jennifer A. Dorsey